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IN THE COURT OF APPEALS OF INDIANA

D. B.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 89A04-0711-JV-603
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE WAYNE SUPERIOR COURT
The Honorable Darrin M. Dolehanty, Judge
Cause No. 89D03-0709-JD-055

March 5, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

D.B. appeals the juvenile court's order committing him to the Indiana Department of Correction. D.B. raises one issue, which we restate as whether the juvenile court abused its discretion by committing him to the Indiana Department of Correction. We affirm.

The relevant facts follow. On May 17, 2006, D.B. received a referral alleging that he committed acts that would be auto theft as a class D felony, conversion as a class A misdemeanor, and unauthorized entry into a motor vehicle as a class B misdemeanor if committed by an adult. This referral was "closed with lecture and release" on June 2, 2006. In July 2006, August 2006, and September 2006, D.B. received referrals alleging that he committed acts that would be two counts of possession of stolen property as class D felonies and four counts of theft as class D felonies if committed by an adult. These referrals were closed with no action taken on March 20, 2007.

On September 13, 2007, the State filed a petition alleging that seventeen-year-old D.B. was delinquent for acts that would be the following offenses if committed by an adult: (1) theft as a class D felony for taking a handgun belonging to Michael Hale on July 4, 2007; (2) auto theft as a class D felony for taking the vehicle of his ex-girlfriend, Rachel Cushard, on July 29, 2007; (3) leaving the scene of an accident resulting in property damage as a class B misdemeanor after he damaged property belonging to Charles and Sally Beck and left the scene on July 29, 2007; (4) minor consuming alcohol as a class C misdemeanor on July 29, 2007; (5) operator never licensed as a class C misdemeanor on July 29, 2007; (6) possession of less than thirty grams of marijuana as a class A misdemeanor on August 21, 2007; (7) burglary as a class B felony for breaking

and entering the home of David Cushard on August 23, 2007; (8) theft as a class D felony for taking the keys of Cushard's 2007 Toyota on August 23, 2007; (9) fraud as a class D felony for using a stolen credit card on August 24, 2007; (10) receiving stolen property as a class D felony for possessing a stolen credit card on August 24, 2007; (11) auto theft as a class D felony for taking Cushard's 2007 Toyota on August 25, 2007; and (12) unauthorized entry of a motor vehicle as a class B misdemeanor for entering Cushard's 2007 Toyota on August 25, 2007.

D.B. admitted the following offenses: (1) leaving the scene of an accident resulting in property damage as a class B misdemeanor after he damaged property belonging to Charles and Sally Beck and left the scene on July 29, 2007; (2) possession of less than thirty grams of marijuana as a class A misdemeanor on August 21, 2007; (3) burglary as a class B felony for breaking and entering the home of David Cushard on August 23, 2007; (4) theft as a class D felony for taking the keys of Cushard's 2007 Toyota on August 23, 2007; (5) fraud as a class D felony for using a stolen credit card on August 24, 2007; and (6) unauthorized entry of a motor vehicle as a class B misdemeanor for entering Cushard's 2007 Toyota on August 25, 2007. The State dismissed the remaining charges. After the dispositional hearing, the juvenile court found as follows:

> 1. That [D.B.] is a delinquent child as defined by I.C. 31-37-1-1.
> 2. That [D.B.] needs care, treatment, and/or rehabilitation to assist [D.B.] in maintaining a healthy, law-abiding lifestyle, and to aid [D.B.] in eventually becoming a productive adult member of society.
> 3. That [D.B.] is not currently enrolled in school.
> 4. That [D.B.] has been referred to the Wayne County Probation Department on eight occasions, for twenty separate offenses.
> 5. That [D.B.] has committed multiple criminal offenses, including at least one very serious offense of Burglary as a Class B Felony.

6. That coercive intervention is needed in [D.B.'s] life, on an immediate basis, if [D.B.] is to be rehabilitated sufficiently to assure that he does not continue a criminal lifestyle once he becomes an adult.
7. That formal probationary supervision is not likely to provide sufficient intervention to assist [D.B.] with rehabilitation.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED as follows:

Wardship of [D.B.] is awarded to the Indiana Department of Correction, for housing in a correctional facility for children.

* * * * *

Appellant's Appendix at 200-201.

The issue is whether the juvenile court abused its discretion by committing D.B. to the Indiana Department of Correction. The choice of a specific disposition of a juvenile adjudicated a delinquent child is generally within the discretion of the juvenile court, subject to the statutory considerations of the welfare of the child, the community's safety, and the policy of favoring the least-harsh disposition. R.S. v. State, 796 N.E.2d 360, 364 (Ind. Ct. App. 2003), reh'g denied, trans. denied. A juvenile disposition will not be reversed absent a showing of an abuse of discretion. Id. An abuse of discretion occurs when the juvenile court's action is clearly erroneous and against the logic and effect of the facts and circumstances before the court, or against the reasonable, probable, and actual deductions to be drawn therefrom. Id.

Ind. Code § 31-37-18-6 governs juvenile dispositional decrees and provides:

If consistent with the safety of the community and the best interest of the child, the juvenile court shall enter a dispositional decree that:

(1) is:

(A) in the least restrictive (most family like) and most appropriate setting available; and
(B) close to the parents' home, consistent with the best interest and special needs of the child;
(2) least interferes with family autonomy;
(3) is least disruptive of family life;
(4) imposes the least restraint on the freedom of the child and the child's parent, guardian, or custodian; and
(5) provides a reasonable opportunity for participation by the child's parent, guardian, or custodian.

D.B. argues that the juvenile court did not choose the least restrictive option, that D.B. was not given an opportunity for rehabilitation, and that the juvenile court failed to follow the probation department and the State's sentencing recommendations.

First, we note that Ind. Code § 31-37-18-6 requires placement in the least restrictive setting only if such a placement is "consistent with the safety of the community and the best interest of the child." D.B. v. State, 842 N.E.2d 399, 405 (Ind. Ct. App. 2006). In other words, "the statute recognizes that in certain situations the best interest of the child is better served by a more restrictive placement." Id. at 406.

We conclude that the juvenile court did not abuse its discretion by committing D.B. to the Indiana Department of Correction. Although less restrictive options, such as probation, were available to the juvenile court and had not been previously utilized with D.B., the juvenile court was not required to impose one of those options. Although the probation department recommended a commitment suspended to probation and the State

concurred in the recommendation,[1] the juvenile court was not required to follow those recommendations. The predispositional report indicated that D.B. was not going to school and was not employed. Despite previous leniency, D.B. had failed to adjust his behavior. Rather, he went on a summer long crime spree and escalated the seriousness of his offenses. D.B. admitted to committing acts that would be three felonies, one of which was a class B felony, and three misdemeanor offenses if committed by an adult.

The juvenile court specifically found that "formal probationary supervision is not likely to provide sufficient intervention to assist [D.B.] with rehabilitation." Appellant's Appendix at 200. Further, the juvenile court noted that immediate intervention was necessary to prevent seventeen-year-old D.B.'s criminal lifestyle from continuing as an adult. D.B.'s offenses indicate that he posed a threat to the community and that commitment in the Indiana Department of Correction was in D.B.'s best interest.[2] The juvenile court did not abuse its discretion by committing D.B. to the Indiana Department of Correction. See, e.g., L.L. v. State, 774 N.E.2d 554, 559 (Ind. Ct. App. 2002) (holding that, although continued placement at the group home was an available, less restrictive

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[1] The State noted that it would follow the probation department's recommendation but that it "would understand if the Court frankly saw otherwise given the nature of all the offenses . . . ." Transcript at 20.

[2] D.B. asserts that D.P. v. State, 783 N.E.2d 767 (Ind. Ct. App. 2003), reh'g denied, and E.H. v. State, 764 N.E.2d 681 (Ind. Ct. App. 2002), reh'g denied, trans. denied, mandate reversal of the juvenile court's order. However, those cases are distinguishable. In D.P., we reversed the juvenile court's order placing a delinquent child in the Department of Correction. In so holding, we recognized unique and "special circumstances surrounding D.P.'s life," such as D.P.'s full-scale I.Q. of 65. D.P., 783 N.E.2d at 770. In E.H., we also reversed the juvenile court's order placing a delinquent child in the Department of Correction for one year. There, we noted that the court failed to take into account neglect and abuse by the child's parents and the fact that there was "no evidence . . . that E.H. is a threat to the community." E .H., 764 N.E.2d at 686. No such factors or special circumstances exist here.

response, the juvenile court was within its discretion in committing L.L. to the Department of Correction for six months), reh'g denied, trans. denied.

For the foregoing reasons, we affirm the juvenile court's commitment of D.B. to the Indiana Department of Correction.

Affirmed.

BARNES, J. and VAIDIK, J. concur